



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

January 3, 2022

BY ECF

The Honorable Analisa Torres
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *In re Search Warrant dated November 5, 2021*, 21 Misc. 813 (AT)

Dear Judge Torres:

The Government respectfully submits this letter in response to the objections filed on December 20, 2021 (Dkt. No. 49), by the Reporters Committee for Freedom of the Press (the "Reporters Committee") to the December 7, 2021 opinion and order issued by the Honorable Sarah L. Cave, United States Magistrate Judge for the Southern District of New York, denying the Reporters Committee's motion to unseal documents relating to a search warrant dated November 5, 2021, which was executed at the residence of James E. O'Keefe, III, the founder and chief executive officer of Project Veritas, in connection with an ongoing federal grand jury investigation. *See In re Search Warrant dated November 5, 2021*, No. 21 Misc. 813 (AT)(SLC), 2021 WL 5830728 (S.D.N.Y. Dec. 7, 2021).

The Reporters Committee's objections should be denied in their entirety for the reasons set forth in Judge Cave's opinion and in the Government's opposition to the Reporters Committee's motion (Dkt. No. 35 ("Opp'n")), which is incorporated by reference herein. In addition, to the extent the Reporters Committee has framed their objections as being in service of an attempt to publicly challenge "the showing made by the Government to obtain the November 5, 2021 search warrant," this Court correctly rejected a similar attempt shortly after Judge Cave's ruling. *See In re Search Warrant dated November 5, 2021*, No. 21 Misc. 813 (AT), 2021 WL 5845146, at *1 (S.D.N.Y. Dec. 8, 2021) ("This Court shall not consider arguments related to the validity of the search warrants because that issue is not before the Court"). Accordingly, Judge Cave's ruling denying the Reporters Committee's motion should be affirmed.¹


Although the Government does not object to Judge Cave's denial of the Reporters Committee's motion, for the reasons set forth in the Government's opposition (*see* Opp'n 6-7), it does respectfully disagree with Judge Cave's conclusions that (1) search warrant applications in

¹ The Government is available to provide a more detailed, point-by-point response to the Reporters Committee's objections in the event the Court would find such a response of assistance.

ongoing criminal investigations are subject to the presumption of a public right of access under the common law and (2) any such presumption is “strong” with respect to such materials. *See In re Search Warrant dated November 5, 2021*, 2021 WL 5830728, at *3-4. As the Government explained at oral argument before Judge Cave (*see* Tr. 15-16 (Dkt. No. 45)), the Second Circuit has held that as to documents for which “filing with the court . . . is generally under seal,” such as search warrant applications, the presumption of access is, at best, a weak one. *United States v. Amodio*, 71 F.3d 1044, 1050 (2d Cir. 1995).

Respectfully submitted,

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